

reconsideration; and (3) allows documents required by the NASD Rule 4800 process to be delivered by e-mail, if the issuer consents to such method of delivery.

The Commission believes that these proposals will improve the efficiency and fairness of the process by which Nasdaq makes listing determinations and, therefore, are reasonable and consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NASD-2004-018), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49515; File No. SR-NYSE-2004-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Listing of Income Deposit Securities (Sections 102.01C, 202.05 and 802.01B of the Listed Company Manual)

April 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 17, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 29, 2004, the Exchange amended the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change

pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Listed Company Manual ("LCM") Sections 102.01C, 202.05 and 802.01B to clarify that income deposit securities intended to be traded as a unit will, as a general matter, be listed if each of the component parts of the unit meets the applicable requirements for listing.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is considering the listing of units comprised of common stock and a debt security, sometimes referred to as income deposit securities ("IDS"). In contrast to a typical unit, an IDS unit can be expected to trade as a unit for an extended period of time, although holders can have certain rights to separate the IDS unit into its component parts (or to combine the components into an IDS).

In order to provide clarity and transparency with respect to the listing standards applicable to IDS units, the Exchange is proposing to amend LCM Section 102.01C to clarify that each component of a unit must meet the applicable listing standards. A comparable amendment is proposed to

LCM Section 802.01B with respect to applicable continued listing standards.

Additionally, the Exchange is proposing an addition to LCM Section 202.05 to specify publication requirements regarding any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of the components within the unit, and to specify that the issuer must provide current information in this regard on its website, or if it does not maintain a website, in its annual report to unit holders. Changes that should be publicized would include those resulting from a stock split or an automatic exchange of one or more components of the unit (e.g., as a result of a secondary offering of units). The issuer would be expected to provide public disclosure as soon as practicable regarding the nature and effective date of the change. For example, changes resulting from a stock split should be subject to prior disclosure, while changes with respect to original issue discount should be disclosed as soon as such information is available. Disclosure of this nature is appropriate to ensure that sufficient information regarding the attributes of IDS units is publicly available and readily accessible on a timely basis.<sup>7</sup>

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 26, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made certain changes to Section 7 of the form 19b-4 and Section III of Exhibit 1 of the proposed rule change and confirmed that the original and continuing equity distribution standards set out in the Listed Company Manual Sections 102.01A and 802.01A will be applied to units listed as income deposit securities.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> The NYSE asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> The Commission notes that Amendment No. 1 also set forth the standards applicable to the units as a whole. See *supra* at footnote 3.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The NYSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a similar proposal by the American Stock Exchange LLC ("Amex"), which the NYSE's proposal is based upon.<sup>12</sup> The Amex proposal was published for comment and the Commission received no comments on it.<sup>13</sup> Finally, the Commission does not believe the NYSE's proposal raises any new regulatory issues. For these reasons, the Commission designates the proposal to be effective and operative upon filing of the amended proposal with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>15</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NYSE-2004-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2004-17, and should be submitted by May 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49532; File No. SR-PCX-2004-01]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. To Trade, Either By Listing or Pursuant to Unlisted Trading Privileges, Index-Linked Exchangeable Notes

April 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Commission Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"),

through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 3, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 22, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. The Exchange proposed to adopt listing standards for index-linked exchangeable notes. With this filing, PCX proposes to add PCXE Rule 5.2(j)(4) to permit for listing or pursuant to unlisted trading privileges ("UTPs"), index-linked exchangeable notes. The text of the proposed rule change appears below. Proposed new language is in italics.

\* \* \* \* \*

Rule 5.2(a)-(i)—No change. (j)(1)-(3)—No change.

#### *Index-Linked Exchangeable Notes*

*(4) Index-linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the Underlying Stocks of an Underlying Index will be considered for listing and trading by the*

<sup>3</sup> On March 3, 2004, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> See letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, dated March 19, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange made a change to the proposed rule text to conform it to those previously approved by both the American Stock Exchange LLC ("Amex"), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Chicago Board Options Exchange, Inc. ("CBOE"). See Securities Exchange Act Release Nos. 46370 (August 16, 2002), 67 FR 54509 (August 22, 2002) (Order granting accelerated approval to SR-CBOE-2002-29); 45082 (November 19, 2001), 66 FR 59282 (November 27, 2001) (Order granting accelerated approval to SR-Phlx-2001-92); and 44621 (July 30, 2001), 66 FR 41064 (August 6, 2001) (Order granting accelerated approval to SR-Amex-2001-29).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> See Securities Exchange Act Release No. 48666 (October 21, 2003); 68 FR 61239 (October 27, 2003) (SR-Amex-2003-83).

<sup>13</sup> See *id.*

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> Because the proposed rule change became effective on March 29, 2004, the date on which Amendment No. 1 was filed, the 60-day abrogation period began on March 29, 2004.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> CFR 240.19b-4.